



DEAN CHRISTOFFEL is a Certified Family Law Specialist practicing in Tucson.

BY DEAN CHRISTOFFEL

A Ripping Good Yarn Told With Verve

The Marketing of Opinions in a Depressed Economy

"You know, Dean,"

George was telling me at lunch (his treat) the other day, "a Recession is when someone else loses his job. A Depression is when you do."

This may seem surprising, but he was actually trying to cheer me up. He was, after all, trying to convince me that the end to my firm's economic woes (brought about less by our own fault than the fault of our clients who lost their jobs, or whose businesses were tied to the auto business as opposed to the war business, or were caught sitting instead of leaving when the musical chairs of house-flipping went flat) could be accomplished through marketing.

And, he was trying to get me to help him on his newest project.

"Things are tightening all over," he continued, "Especially in the public sector. With budget cuts and such, every state

office and agency is having to consider marketing if they wish to keep their jobs.

"You know judges, cops and probation officers are in competition with teachers, administrators and principals. Traffic engineers, heavy equipment operators and flaggers in their orange vests are facing off against park rangers, sanitary engineers and *whatever* they call those people who issue building permits.

"It's Infrastructure versus Service," he explained.

Ignoring my dull gaze, he continued.

"And what, you might ask, are they competing for? Why, the tax dollar, of course. The ever-decreasing, non-spreadable, we-resent-like-hell-to-pay-it tax dollar.

"It's a zero-sum game, amigo. For every dollar one agency gets, it's a buck less for another. I tell you, it's getting tougher and tougher every day, and everyone is looking

to marketing to help them get the bigger share.

"And the guys who dole out these tax dollars? You know, those guys who couldn't even convince the people of this state to give them a 10-buck raise in over 30 years? *Those* are the guys who get to decide where those scarce dollars go."

Not sure where all this was heading, I sat quietly, which George took as a sign to go on—which he did.

"But, you've got to admit, it's a great time to be creative. Let me tell you about a project I'm working on with the appellate courts. You know when it comes to having a low profile where the public is concerned, no one is more under the radar than an appellate court. I mean, when one of those judges has to face a retention election, they need only get their spouse and children to vote for them and they have a lifetime job.

It's not like with the trial judges who actually have to look at the party they rule against. I mean, actually talking to a party is not something an appellate judge does probably more than three times in his or her career. And two of those were probably giving directions to the restroom.

"They're like the radiologists of the judiciary: highly educated, highly trained professionals who want nothing to do with actual people. They just like to look at pictures or transcripts, you know? Even if they're diagnosing a severe brain tumor in a young child, it's just a black-and-white photo. A transcript of the messiest child molesting can be just a story on paper.

"So, as you can well imagine, they are not the most exciting commodity to try to market, but apparently, they, too, need to eat. And, I'm told, their staffs are nice.

"It was a genuine struggle to come up with something to help them out in this budget bind. That's when I had this new idea we are developing: We're going to sell hits on the Internet for their judicial opinions. You know, like advertisers do on the popular Google sites. Every 10 hits, or every 10 times someone looks at your site, you get paid a certain amount. The more popular the opinion—the more often it is looked at or cited in other opinions—the more money a judge will make as its author.

"We sold the idea to Westlaw and to Lexis, and they'll charge their subscribers and pay for the opinions like royalties on music. So Lexis will be like the next iTunes. But instead of 99 cents for downloading a song, it'll be a dime to download an opinion. And just like iTunes, you can preview an opinion, and we'll have a section that finds for you other opinions that might fit into your research. Kind of a "If you liked *Young v. Smith*, you might like *Jones v. Taylor*." And this will keep people looking at sites and selling more opinions."

"You're kidding me," I said, full of respect for the judicial branch of our government. "Those judges would never stoop to such crass commercialization of their profession."

"No, I'm not," he shot back. "And yes, they would."

He continued.

"You remember how you always used to complain that all of the really good law and

insights into how appellate judges think hide out in those Memorandum Decisions that could hardly be found and could never be cited as authority?

"Gone are those days. All opinions are now going to be published, since the judges will be paid only if the opinions are available to be seen and to be used. We may have to offer discounts on some of the opinions—you know, the lesser-quality ones—to give a chance for all of the judges to have a go at this market. But I think they'll catch on quickly as to how to write opinions that will sell.

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"And, that," he said with an ominous tone, "is where you come in."

Or at least it seemed ominous to me.

"Why me?" I asked meekly. "I have no background in marketing, and while I may have read an opinion or two, I'm hardly the guy to convince others to spend their time that way."

"No, no. You're just the right guy. You're the bookish type, always a book or two on your bed stand, one in the kitchen and one in the toilet and yet one more in your car just in case you get stuck somewhere, you'll have something to read. I know you buy books all of the time," he argued.

"And how do you pick what books to read?" he asked. "Say you're browsing in a bookstore. What gets you to pick up a book and buy it?"

"The title, I guess. Maybe the cover. And then I read the blurbs."

"Bingo!" he cried, raising both hands above his head, doing a quick little dance

in his chair.

"We can't change the names of the cases to give them an eye-grabbing title. And we really can't provide illustrations for judicial opinions, although I know many lawyers would enjoy having more pictures in what they read and would, maybe, understand the material if we did so. But no, we can't go that far. Yet.

"We can use blurbs, though. You can write some based on opinions you've read recently and we'll get this started. And, best of all, you'll be paid. Knowing what's up with your practice now, I know you've got the time.

"C'mon, give it a whirl. I promise I won't tell anyone."

I was willing to try. Especially because the money he was offering would keep me in my office with the lights on for a month or so.

"Let's try one," he said. "What have you got in your briefcase?"

I pulled the case open and found a printed opinion in a client file.

"It's *Becchelli v. Becchelli*."

"What's it about?"

"It says that where property is paid for by one party and taken in joint names, the general rule is that it is held in trust for the one paying for the property. But if the parties are married, there is instead a very, very strong presumption of a gift of one-half to the non-paying party."

"No, no, no, that won't do. That's not the way to put it. That sounds like one of those headnotes by Westlaw. Snoresville. You need to be thinking: How can we sell this opinion? Here, let me see it."

He grabbed the pages from my hand and began to read them quickly.

"Where are the facts?"

"Here," I said, pointing to the bottom of the second page.

He became very animated.

"Oh yeah. Yes, baby! That's more like it! Here, this is the good stuff: 'Dominic Becchelli, an elderly man, marries Mary, a much younger woman. Dominic has kids who warn him about Mary. Mary is in substantial debt at the time of marriage, has a Buick on which two payments had been made, and she made payments only when she worked, which was not very often, it seems. Everyone ends up in divorce court. Court finds Mary guilty of excess and cruel treatment, and she still ends up with half of



Dominic's stuff?
"Too cool. *Too cool.*"

"So," he says, "here's how we make this a popular opinion. It's got all the necessary ingredients to be a winner. Here how it goes."

He begins to speak in a deep voice, like the voiceover narrator in a movie preview:

"A man thinks he's past his prime, a woman reawakens him, passion burns, his heart breaks, her greed shows. Will she get his house?"

"*Becchelli*: a classic tale of divorce ... *Arizona style.*

"A *great* read! A *must-read!*"

"Yep," he continued, "all the right stuff to make this Justice Struckmeyer a best-seller!"

He looked at me, smugly. "What else you got in that briefcase?"

I rummaged around and pulled out another opinion.

"Let's see," I said, while reading. "I've got this case, *Sharpe v. Arizona Health Care Cost Containment System*. It's a 31-page Court of Appeals opinion on whether AHCCCS is required to supply dentures."

"Wow," he said. "31 pages? Dentures?"

Sounds like this will be a real challenge to sell."

"Yeah," I agreed, "and, to make matters worse, the opinion is 31 pages of grammatical parsing of bureaucratic regulations, of which, it looks like five pages are devoted to an analysis of whether the authorizing statute is disjunctive or conjunctive."

"What!?" he exclaimed.

"That's what it says right here," I explained.

"How will we get readers for this?" he complained.

We stared at one another for a long moment. Then George's face became animated. Slowly, a full smile crawled across his face.

"I've got it!" he said. And then, once more in that narrator voice, he boomed out:

"Stop yearning for that elegant, entertaining opinion that used to be. It's right here, right now. The epic story of a battle between titans: Bureaucrats attempt to thwart the Legislature and the will of the people. But a scholarly appellate judge, armed only with the awesome power of the English language, stands in their way.

"The *Sharpe* decision: moving, challenging, almost bewilderingly beautiful."

"Good Lord," I cried, "How do you do that?"

"Don't worry," he replied. "With a little practice, and a little attitude, you'll get the feel for it."

Well, the money certainly seemed worth a shot at it. So I copied some blurbs adorning books I found on the judges' shelf at the Pima County Law Library and grabbed a few opinions from some old seminar materials I had. I figured I'd tried to match them up and pass them on to George to get his project going.

That's where you come in.

Now, You Try

So, what about you? Have a go at it yourself. Here are the cases (numbered) and the blurbs (with letters). Match them up and post your answers on the **Facebook** page of ARIZONA ATTORNEY—**anytime after noon on Thursday, April 1 (early submitters will be cruelly ignored)**. Just go to <http://tinyurl.com/ksgly5> and enter your answers in the "Wall" box (the "What's on your mind?" space).

The first to enter the answers correctly **after noon on April 1** is the winner—and will receive a nice, age-appropriate award!

So let's get started:

The Cases

1. *Toth v. Toth*
2. *Carroll v. Lee*
3. *Waldren v. Waldren*
4. *In re Dean*,
212 Ariz. 221
5. *State v. Fierro*
6. *Williams v. Williams*
(12/31/08)
7. *Kelly v. Kelly*
8. *Koelsch v. Koelsch*
9. *Gerow v. Covill*
10. *Rueschenberg v. Rueschenberg*

The Blurbs

- A. Plenty of zigs and zags in his analysis make this another strong opinion for Judge _____.
- B. Surprises await around every bend ... a very satisfying ride with a nail biting finish.
- C. Intense courtroom drama—as startling as the bang of a gavel.
- D. A marvel of craftsmanship and intelligence—Don't start at night if you want to sleep.
- E. A deeply affecting narrative ... by turns comical and elegiac, farcical and tragic.
- F. One of Judge _____'s best, a nonstop rollercoaster of an opinion.
- G. Fascinating ... good courtroom drama ... this is the mark of a natural storyteller.
- H. A ripping good yarn told with verve, intensity and a feel for historical detail.
- I. Brutal, unrelenting action with a heart-stopping Remand with Instructions.
- J. A work of quiet brilliance. Like Capote and Mailer before her, Judge _____ compiles her details with a reporter's skill and arranges them with a novelist's arrogance.